

NO. 5:08-HC-2033-H

ORDER.

evaluations conducted by the parties' expert witnesses, court

documents, and prison records. The parties have each filed proposed findings of fact and conclusions of law, and this matter is ripe for adjudication.

BACKGROUND

Maranda is a forty-six-year-old bisexual male and has been in federal custody since 2005 for violating a term of supervised release imposed upon his conviction of child pornography charges in 2000. Maranda was due to be released March 16, 2008; however, on March 10, 2008, the government certified Maranda as a sexually dangerous person pursuant to 18 U.S.C. § 4248, thereby staying Maranda's release from federal custody.

Maranda has a history of contact and non-contact sexual offenses, spanning a period of six years.¹ Maranda's first offense occurred on February 21, 1994, when Maranda at the age of twenty-seven exposed his penis to a six-year-old girl. Four days later, on February 25, 1994, Maranda exposed himself to a female cashier at a restaurant and then tried to pull her into his car. On July 1, 1994, Maranda pled guilty to two counts of public indecency and was sentenced to two years' conditional

¹Maranda's background, including his childhood development, alleged childhood abuse, medical history, relationships, criminal background and substance abuse history, is detailed in the record before the court and is not in dispute. Although the court does not reiterate those facts here, the court has considered the relevant information.

discharge, forty-five days' work release and 120 days of home confinement.

In August 1994, Maranda's conditional discharge on the above convictions was revoked as a result of Maranda's sexual assault of a six-year-old boy he was babysitting. Maranda placed his penis in the boy's mouth and placed his mouth on the boy's penis. On November 13, 1994, Maranda pled guilty to criminal sexual assault and was sentenced to eight years in prison and two years' mandatory parole. Maranda was released on parole on May 22, 1998. In August 1998, Maranda's parole was revoked for not obtaining employment, and Maranda returned to custody until October 1, 1998, when Maranda was once again paroled.

On April 12, 1999, Maranda was arrested for parole violations stemming from his receipt and possession of child pornography. In April 2000, Maranda pled guilty to two counts of child pornography, one for receiving child pornography via the internet and one for possession of child pornography via the internet, for conduct occurring from February 21 to April 12, 1999. Maranda was sentenced to two concurrent terms of forty months' imprisonment and five years' supervised release. Maranda was released from custody and began serving his term of supervised release on December 2, 2002.

In January 2005, Maranda was arrested on charges of aggravated criminal sexual abuse for allegedly fondling his former girlfriend's nine-year-old daughter through her clothing in June 2003. In June 2005, Maranda pled guilty to aggravated domestic battery, and the aggravated criminal sexual abuse charge was dismissed. The government has not shown by clear and convincing evidence that Maranda committed a sexual offense against his former girlfriend's daughter.

Maranda's supervised release was revoked in August 2005, and he has been in custody since that time. The grounds cited for revocation of his supervised release were: (1) that Maranda possessed sexually arousing material from January through September 2003; (2) that in June 2003, he had contact with minors without the approval of the United States Probation Office; (3) that he used alcohol from January through September 2003; and (4) that he committed another crime (aggravated domestic battery in June 2003).

Maranda has participated in a number of sex offender treatment programs over the years. From July 1998 to March 1999, Maranda participated in weekly sex offender treatment groups at the Robert Young Center in Illinois. While incarcerated at FCI-Pekin, Maranda completed an eighteen-month sex offender treatment program, where he attended one or two sessions per week. Progress reports from the program at FCI-

Pekin indicate that Maranda thought seriously about his past problem behaviors, was attempting to make a positive change in his life and was always cooperative and attended sessions regularly. From February 2003 until January 7, 2005, Maranda participated in weekly sex offender treatment on an outpatient basis while on supervised release. Maranda also participated in the sexual offender treatment program at FCI-Butner from April to June 2006, when he chose to withdraw from the program. Maranda is not currently enrolled in sex offender treatment.

While enrolled in sex offender treatment at FCI-Butner, Maranda was disciplined by BOP officials for engaging in a sexual act and making sexual proposals. The incident underlying the disciplinary action occurred in April 2006, when Maranda invited his cellmate to have anal sex. His cellmate declined, and Maranda then proceeded to masturbate, with his cellmate's permission, while his cellmate lay in his bed and watched. BOP reports indicate that Maranda was cooperative and took full responsibility for his conduct and that both inmates denied any coercive, abusive or threatening behavior.

Since his certification as a sexually dangerous person, Maranda has been found in possession of sexually suggestive materials on two occasions. In November 2009, BOP officials confiscated two mailings addressed to Maranda from M.F.P - Miller's Fantasies Photos. Included in these mailings were

twenty-two photos of scantily clad young women in sexually explicit poses, with many of the photos focusing on the vulva or anal area of the body. Also, in July 2010, Maranda was found to be in possession of one "Maxim" magazine and forty-six clippings of adult females who were either nude or posed in a sexually suggestive manner. Maranda has not been cited for possession of any prohibited media or for engaging in sexual conduct since July 2010.

COURT'S DISCUSSION

The Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, 120 Stat. 587 (2006), authorizes the indefinite civil commitment of, inter alia, individuals in the custody of the Bureau of Prisons who are determined to be sexually dangerous persons. A "sexually dangerous person" is defined by statute as one "who has engaged or attempted to engage in sexually violent conduct or child molestation and who is sexually dangerous to others." 18 U.S.C. § 4247(a)(5). "Sexually dangerous to others" means that "the person suffers from a serious mental illness, abnormality, or disorder as a result of which he would have serious difficulty in refraining from sexually violent conduct or child molestation if released." 18 U.S.C. § 4247(a)(6).

To obtain an order civilly committing Maranda pursuant to § 4248, the government must prove by clear and convincing

evidence: (1) that Maranda "has engaged or attempted to engage in sexually violent conduct or child molestation"; (2) that Maranda currently "suffers from a serious mental illness, abnormality, or disorder"; and (3) that as a result of the serious mental illness, abnormality, or disorder, Maranda "would have serious difficulty in refraining from sexually violent conduct or child molestation if released." United States v. Comstock, 627 F.3d 513, 515-16 (4th Cir. 2010). Clear and convincing evidence is "'evidence of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established,'" or "'evidence that proves the facts at issue to be highly probable.'" United States v. Hall, 664 F.3d 456, 461 (4th Cir. 2012) (quoting Jimenez v. DaimlerChrysler Corp., 269 F.3d 439, 450 (4th Cir. 2001)).

I. Sexually Violent Conduct or Child Molestation

There is no dispute in this case that Maranda has engaged in past acts of child molestation. This is evidenced by his 1994 conviction for criminal sexual assault of a six-year old boy.² Thus, the government has established the first prong of sexual dangerousness by clear and convincing evidence.

²The court does not reach the issue whether any of Maranda's other conduct (e.g., acts of exposure or possession of child

II. Serious Mental Illness, Abnormality or Disorder

The government has also shown, by clear and convincing evidence, that Maranda suffers from a serious mental illness, abnormality or disorder. Both Dr. Malinek and Dr. Cunic testified that Maranda meets the diagnostic criteria for pedophilia, sexually attracted to both males and females, nonexclusive type - meaning that Maranda's sexual orientation is directed to both prepubescent and post-pubescent individuals of both sexes. While Dr. Rosell questions the pedophilia diagnosis, he does so on the ground that prior versions of the Diagnostic and Statistical Manual of Mental Disorders ("DSM") made clear that pedophilia exists only where there are recurrent sexual urges or fantasies involving prepubescent children, which Dr. Rosell opines is absent in Maranda's case. However, as Dr. Rosell notes, the DSM-IV and the DSM-IV-TR (the current version) appear to have expanded this criteria by including "behaviors involving sexual activity with a prepubescent child or children." Thus, the diagnostic criteria for pedophilia currently include recurrent, intense, arousing fantasies, sexual urges or behaviors involving sexual activity with prepubescent children (generally age 13 years or younger) over a period of six months. As Maranda has a history of such behavior over a

pornography) constitutes sexually violent conduct or child molestation.

period of more than six months, he appears to meet the diagnostic criteria for pedophilia.

Additionally, Maranda has been diagnosed with antisocial personality disorder. Although not a paraphilia (i.e. a disorder involving sexual arousal that deviates from normal arousal patterns), antisocial personality disorder is nonetheless a "serious mental illness, abnormality or disorder" within the meaning of § 4248.

III. Serious Difficulty Refraining from Sexually Violent Conduct or Child Molestation

The crux of this case lies with the third prong of the sexual dangerousness test - whether Maranda, if released, would have serious difficulty in refraining from sexually violent conduct or child molestation as a result of his pedophilia or antisocial personality disorder. This prong "'serve[s] to limit involuntary civil confinement to those who suffer from a volitional impairment rendering them dangerous beyond their control.'" United States v. Hall, 664 F.3d 456, 463 (4th Cir. 2012) (quoting Kansas v. Hendricks, 521 U.S. 346, 357 (1997)). The government need not establish that the person it seeks to commit will or is likely to reoffend. However,

there must be proof of serious difficulty in controlling behavior. And this, when viewed in light of such features of the case as the nature of the psychiatric diagnosis, and the severity of the mental abnormality itself, must be sufficient to distinguish the dangerous sexual offender whose serious mental

illness, abnormality, or disorder subjects him to civil commitment from the dangerous but typical recidivist convicted in an ordinary criminal case.

Kansas v. Crane, 534 U.S. 407, 413 (2002).

The mere presence of a sexual attraction to minors is insufficient to meet the "serious difficulty" prong. United States v. Carta, No. 07-12064, 2011 WL 2680734 (D. Mass. July 7, 2011), aff'd, No. 11-1921, 2012 WL 3064842 (1st Cir. July 27, 2012). "[I]f the person the government seeks to commit has developed the skills necessary to overcome the urge to have sexual contact with minors without [serious] difficulty," the government fails in meeting its burden as to this prong of the test. Id.

Relying in large part upon actuarial assessments, Drs. Malinek and Cunic testified that Maranda is at high risk of committing another sex crime in the future. After considering static and dynamic risk factors - Maranda's history of revocation or failure to meet conditions of release, negative social influences, lifestyle/relationship instability, poor problem solving skills, impulsiveness, emotional identification with children, among others - these experts opine that Maranda will have serious difficulty refraining from sexually violent conduct or child molestation.

Dr. Rosell, on the other hand, places Maranda in the low-moderate risk category for sexual recidivism. Dr. Rosell notes

that the actuarial instruments produce varying rates of risk, with Maranda's rate of recidivism over a ten-year period ranging from 19.7% to 48.6% on the Static-99R alone. According to Dr. Rosell, Maranda's overall offending pattern is minimal compared to other sex offenders. Considering protective factors, such as Maranda's moderate participation in sex offender treatment, his understanding of ways to avoid future problematic behavior and an appropriate release plan, Dr. Rosell opines that Maranda "currently does not pose a serious risk for engaging in sexually dangerous behavior toward others" and therefore does not meet the criteria for commitment under § 4248.

Based on the evidence presented, the court is unable to say that there is clear and convincing evidence that Maranda will have serious difficulty refraining from sexually violent conduct or child molestation if released from custody. Although Maranda has a history of contact and non-contact sexual offenses involving children, these offenses are relatively isolated and occurred over twelve years ago. The court finds that the government has not shown by clear and convincing evidence that Maranda committed a sexual offense against his former girlfriend's daughter in 2003, and therefore Maranda's last offense was for possession of child pornography in 1999. Aside from the alleged 2003 incident (which the court finds is not supported by clear and convincing evidence), there are no

allegations that Maranda engaged in inappropriate behavior from 1999 until his parole was revoked in 2005 for possession of "sexually arousing materials" (apparently not involving children), unauthorized contact with minors, use of alcohol and conviction of aggravated domestic battery.

Since 2005, Maranda has been incarcerated in the BOP, where he has been relatively offense free. During his incarceration, Maranda has been cited twice for possession of sexually suggestive materials depicting adult females. The only other infraction with which Maranda was charged involved an incident in which Maranda solicited sex from a fellow inmate and, when the inmate declined, then masturbated in the presence of the inmate. As to this incident, there is no indication that Maranda threatened or otherwise tried to force the inmate to engage in any sexual activity. Maranda's actions while in prison, although impermissible, do not constitute evidence of a strong, persistent and deviant desire to have sex with children, nor do they demonstrate a lack of volitional control with regard to engaging in sexual offenses with children.

Were Maranda to be released unconditionally, the court might be persuaded that Maranda poses a significant likelihood of reoffending. However, Maranda concedes that he has not begun serving the two-year term of supervised release imposed by the United States District Court for the Central District of

Illinois in 2005. In addition to standard conditions of supervised release, Maranda will be subject to the following special conditions of supervision:

1. that Maranda register with the state sex offender registration agency;

2. that he neither possess nor have under his control, any material that contains nudity or that depicts or alludes to sexual activity or depicts sexually arousing material;

3. that he not receive or transmit any sexually arousing material, including child pornography, via the internet nor visit any website containing any sexually arousing material, including child pornography; and that he purchase and install on any computer he possesses or uses software to monitor and block access to sexually oriented websites;

4. that he allow the probation office to conduct periodic, unannounced examinations of his computer equipment and residence, which may include copying of all data from the computer to ensure compliance and/or removal of equipment to allow more thorough inspection;

5. that he participate in sex offender treatment program as deemed necessary by the probation office and submit to physiological testing, including polygraph testing, which may be part of a sex offender treatment program;

6. that he have no contact with anyone under the age of eighteen except in the presence of a responsible adult who is aware of the nature of his background and current offense, and who has been approved by the probation officer;

7. that he not own, purchase, or possess a firearm, ammunition or other dangerous weapon; and

8. that he refrain from any use of alcohol and not purchase, possess, use, distribute or administer any controlled substance or any paraphernalia related to any controlled substance, except as prescribed by a physician; and that he participate in a substance abuse treatment program at the direction of the probation office.

If Maranda were to violate any of these special conditions, the court would expect that his supervision would be revoked and an active term of imprisonment would be imposed. As a further consequence, the government would once again have the opportunity to consider certification of Maranda for civil commitment under § 4248. Maranda appears to understand the reality of his situation and the potential consequences he will face if he reoffends.

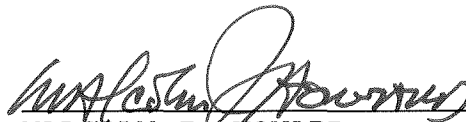
The court finds that Maranda also recognizes and appreciates the severe harm he has caused the victims of his sexual offenses. He appears sincerely remorseful for his past conduct and understands the steps he must take to avoid his offending behavior, including the need to make better decisions, to refrain from associating with sex offenders, to avoid high-risk situations, to keep himself occupied with work, his art, or similar endeavors, and to refrain from using alcohol. He accepts the conditions to which he will be subject upon his release and appears willing to comply with those conditions.

In sum, the court finds that the government has not met its burden of proving, by clear and convincing evidence, that as a result of his mental illnesses, abnormalities or disorders, Maranda would have serious difficulty in refraining from sexually violent conduct or child molestation.

CONCLUSION

For the foregoing reasons, judgment shall be entered against the United States and in favor of the respondent, Darrin Maranda. The stay of release imposed by 18 U.S.C. § 4248(a) is hereby LIFTED, and the United States shall forthwith release Maranda from incarceration. As ordered by the United States District Court for the Central District of Illinois, Maranda shall report to the United States Probation Office for the district in which he is released within seventy-two (72) hours of his release in order to begin serving his term of supervised release.

This 6TH day of September 2012.


MALCOLM J. HOWARD
Senior United States District Judge

At Greenville, NC
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